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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,547	06/14/2006	Patrick Schiffrine	0512-1318	9488
<small>465</small> YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			<small>7590</small> EXAMINER FISHER, ELANA BETH	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/07/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,547

Applicant(s)

SCHIFRINE ET AL.

Examiner

ELANA B. FISHER

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 and 10-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Grunde (U.S. Patent 5,649,928).

- a. Regarding claim 1, Grunde discloses a device comprising a tensioning component (II) having a tensioning component plate (24) configured to be supported on a tibial cutting surface, sliding means (39) extending from the tensioning component plate, a slide (see diagram provided) displaceable on the sliding means in a direction substantially perpendicular relative to the tensioning component plate and having means (25) for being temporarily fixedly joined to an ancillary component (12), the ancillary component comprising a tibial plate (17) and a centro-medullary rod (11) extending from the tibial plate, and configured to receive adjusting means (16) of variable thicknesses, the adjusting means positioned at the end of a femur when a knee is in a state of flexion

at approximately 90°, to allow spacing in an extended state of an articulation to be obtained (FIG 1). Additionally there is a motor means (23, 36) displacing the slide (see diagram provided) and thereby tensioning the knee by way of the tensioning component plate (24) pressed on a tibial cut and the ancillary component (12) which is fixedly joined to the slide (FIG 1). Further more there is a drilling guide (35) mounted on the sliding means (39) and having drilled holes (34) for positioning a cutting block on the femur to allow posterior femoral cuts to be brought about (FIG 2); the drilling guide (35) configured to receive means for palpating an anterior portion of the femur for positioning the drilling guide in alignment with the anterior portion, and reference means (38) for determining a position of the slide (see diagram provided) and/or the drilling guide (35) relative to the tensioning component plate (24) and therefore determine an interarticular space available in the state of flexion, the device thus allowing either a position of a distal femoral cutting plane to be determined by determining a difference between a spacing in a state of extension and a space in the state of flexion, or, a position of t-be a posterior femoral cutting plane to be determined in order to obtain approximate equality between the spacing in the state of extension and the space in the state of flexion (FIG 1).

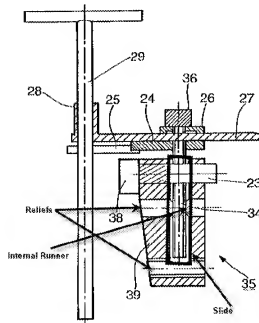
b. Regarding claim 2, the device further comprises a size estimation component (22) configured to be mounted on the sliding means (39) for estimating, using a reference means, the size of the femur and allow allowing selection of a correct drill guide component.

- c. Regarding claim 3, the dimension of the tensioning component plate (24) is such that a femoral end can be received between the tensioning component plate and the size estimation component (22), in the manner of a calliper rule (FIG 1).
- d. Regarding claim 4, the device further comprises a distal cutting guide support having a member (30) configured to slide on the sliding means (39) and from which an arm (33) extending from the member (30) which extends parallel with the axis of the knee in the state of flexion, and means for (34) receiving and for fixing the distal cutting guide at a precise location, the precise location determined by a calculation of the difference between the spacing in the state of extension and the space in the state of flexion.
- e. Regarding claim 5, the slide (see diagram provided) is configured to be displaced by means of an assembly comprising a screw (36) and a nut (23) to slide the slide and place the knee in a state of tension.
- f. Regarding claim 6, the sliding means (39) have an internal runner (see diagram provided) and the slide is guided in the internal runner, and the sliding means (39) have an outer surface for guiding at least the drilling guide (35), the slide having a portion which allows the drilling guide to be moved.
- g. Regarding claim 7, the drilling guide (39) is configured to receive a palpating arm configured to press on the anterior surface of the femoral end to limit the insertion of the drilling guide on a guiding means in order to optimize a drilling position.

- h. Regarding claim 8, the slide (see diagram provided) has reliefs (see diagram provided) which allow for precise positioning, relative to the slide, of the tibial plate (17) of the ancillary component (12) and a rapid fixing means (16) to the slide.
- i. Regarding claim 10, Grundei discloses a device an ancillary component (12) with a tibial plate (17) and a centro-medullary rod (11) extending from a surface of the tibial plate, and a tensioning component (II) having a tensioning component plate (24) configured to be supported on a tibial cutting surface, a sliding means (39) extending perpendicularly from a surface of the tensioning component plate (24), a slide (see diagram provided) on the sliding means (39) and displaceable with the sliding means (39) in a direction perpendicular to the surface of the tensioning component plate (24), and releasably fixedly joined to the tibial plate of the ancillary component (12). Additionally there is a motor means (23, 36) for displacing the slide (see diagram provided) to tension a knee in a mode wherein the tensioning component plate (24) is pressed on a tibial cut and the centro-medullary rod (11) of the ancillary component (12) is in a femoral medullary canal of a femur, and a drilling guide (35) mounted on the sliding means (39) and having drilled holes (34) for positioning a cutting block on the femur to allow execution of posterior femoral cuts, the drilling guide (35) configured to receive means for palpating an anterior portion of the femur for positioning the drilling guide (35) in alignment with the anterior portion. Furthermore, there is reference means (38) for determining the position of at least one of the slide (see diagram provided) and the drilling guide (35) relative to the tensioning component plate (24) and for determining an interarticular space available in a state of flexion.

- j. Regarding claim 11, wherein the motor means comprises a screw (36) rotatable relative to the sliding means, the screw co-operating with a threaded portion of the slide for displacing the slide relative to the sliding means (FIG 3).

Regarding the above claims, see figures 1-3 and the diagram provided below.



Allowable Subject Matter

4. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELANA B. FISHER whose telephone number is (571)270-3643. The examiner can normally be reached on Monday through Friday from 8:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elana B Fisher/
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733

